

China revises rules on foreign M&A of Chinese companies

A new version of rules on foreign investors' mergers and acquisitions of Chinese companies was issued by the Ministry of Commerce on July 23, effective since July 22, 2009.

The Ministry of Commerce explained that the revision made the new rules in compliance with the Anti-monopoly Law which took effect on August 1, 2008 and the State Council's regulations on business concentration.

The revision includes deletion of Chapter Five on "anti-monopoly review". An additional item has been put into the appendix, which provides that according to the Anti-monopoly Law, foreign investors have to file an application for their deals to the Ministry of Commerce if their proposed deals are up to the threshold set by the regulations on business concentration.

The State Council issued the documents on the declaration threshold in August 2008 right after the Anti-monopoly Law took effect. A business concentration should be reviewed if it involves a global trade of 10 billion yuan (about 1.46 billion U.S. dollars) by all related parties and the total domestic trade volume of at least two sides of related parties exceeds 400 million yuan in the previous fiscal year.

A concentration case with a domestic trade over 2 billion yuan by all related parties in the last fiscal year and the trade volume of at least two of those parties within China exceeding 400 million yuan is also subject to the anti-monopoly review.

The terminology of "actual controllers" also replaces the "ultimate controllers" in Article 42 and 44 in the revised version of the rules on foreign investors' M and A of Chinese companies.

Minor alterations are also made to some wordings of the rule.

The previous rule had been effective since September 8, 2006.

By People's Daily Online
